



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

ELP

Docket No. 4346-00

27 November 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552  
(b) NAVADMIN 187/93

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that the record be corrected to show that on 14 June 1994 he was transferred to the Fleet Reserve under the Temporary Early Retirement Authority vice being discharged.

2. The Board, consisting of Messrs. Milner and Hogue and Ms. Hare reviewed Petitioner's allegations of error and injustice on 21 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. The record reflects that on 20 May 1991 Petitioner was transferred from the USS BUTTE (AE-27) to the Transient Personnel Unit, Philadelphia, PA for temporary duty for a period of 90 days. On 20 September 1991 a full duty medical board diagnosed Petitioner with mechanical low back pain with mild left leg radicular symptoms, that did not exist prior to enlistment (DNEPTE); and bilateral L5-S1 spondylolysis, DNEPTE. It was the opinion of the medical board that Petitioner had achieved the maximum benefits of outpatient care and was fit for full duty. However, there was concern that if he returned to the duties of his rate as a boatswain's mate, he could well exacerbate his back symptoms. It was recommended that he be retained in his current position on full duty. However, on 20 March 1992, Petitioner received orders back to the USS BUTTE.

d. On 27 April 1992, Petitioner reenlisted on board USS BUTTE for four years as a BM1 (E-6). At the time of his reenlistment, he had completed more than 15 years of active service. He was transferred from the USS BUTTE on 25 February 1993 to a naval hospital and was subsequently assigned the Naval Weapons Station, Colts Neck, NJ for a period of limited duty.

e. On 17 May 1994, a physical evaluation board found Petitioner unfit to perform the duties of his rating due to physical disability. He was assigned a 10 percent disability rating. On 27 May 1994, the Chief of Naval Personnel directed separation by reason of physical disability with entitlement to severance pay. Petitioner was so discharged on 14 June 1994. Blocks 12a, c and d of the DD Form 214 are an incorrect. Block a should show Petitioner "entered on active duty this period" on 4 August 1986 vice 21 May 1986. Blocks c and d should read 07-10-11 and 10-00-00, respectively. Recomputation indicates that at the time of his discharge he had completed 17 years, 10 months and 11 days of active service.

d. The 15-Year Early Retirement/Fleet Reserve Program was implemented in fiscal year (FY) 1994. It was not an entitlement, but a temporary early retirement authority (TERA) authorized to help facilitate the draw down of personnel. The TERA offered early retirement at a reduced monthly stipend to eligible service members prior to completing twenty years active of service. At the time of Petitioner's discharge, TERA applied primarily to individuals serving in units and activities to be decommissioned or disestablished in FY 94. Eligibility for retirement under this program required at least 15 years of active service between 1 October 1993 and 30 September 1994 and

was dependent upon an individual's rating, pay grade, time in pay grade, NEC, and the needs of the Navy. Reference (b), in effect at the time of Petitioner's discharge, indicates that with the exception of serving in a unit to be decommissioned, he was eligible for retirement under TERA.

e. The Board is aware that Petitioner's severance pay will be recouped if he is retired under TERA.

f. The Board is also aware that the Uniform Retirement Date Act, 5 U.S.C. 8301, requires that the effective date of any retirement be the first day of the month.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that after a full duty medical board, Petitioner served on board the USS BUTTE for nearly a year, was then placed on limited duty again, and was finally discharged for physical disability. Although Petitioner may not have fully met the criteria of TERA at the time, the Board believes that had he been properly advised of TERA and requested early retirement under this program, it would have been granted. The Board further believes to not allow him to retire after completing nearly 18 years of excellent service is unjust. Given these circumstances, the Board concluded that retirement under the provisions of TERA is warranted. Therefore, as an exception to policy, the record should be corrected to show that he was not discharged on 14 June 1994 but served on active duty until he was transferred to the Fleet Reserve under TERA, effective 1 July 1994.

#### RECOMMENDATION:

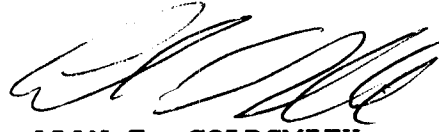
a. That Petitioner's naval record be corrected to show that he was released from active duty on 30 June 1994 and transferred to the Fleet Reserve under TERA, effective 1 July 1994, vice the discharge actually issued on 14 June 1994.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

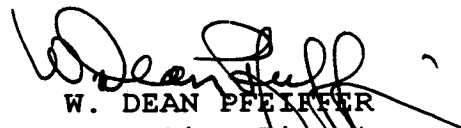
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director